



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/730,744

12/08/2003

Bruce Wesson

P02258US (98525.1P3)

2669

22920 7590 01/15/2010
GARVEY SMITH NEHRBASS & NORTH, LLC
LAKEWAY 3, SUITE 3290
3838 NORTH CAUSEWAY BLVD.
METAIRIE, LA 70002

EXAMINER

ALEMU, EPHREM

ART UNIT

PAPER NUMBER

2821

MAIL DATE

DELIVERY MODE

01/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE WESSON

Appeal 2009-001007
Application 10/730,744
Technology Center 2800

Decided: January 15, 2010

Before ADRIENE LEPIANE HANLON, CHUNG K. PAK, and
MARK NAGUMO, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Pursuant to 37 C.F.R. § 41.52, Appellant requests “reconsideration of the decision dated 30 August 2009” (“Decision”) wherein we sustained the Examiner's rejections of claims 39 through 54 under 35 U.S.C. § 103 and claims 49 and 56 through 59 under nonstatutory obviousness-type double

patenting. (See Request for Rehearing¹ (“Request”) dated November 30, 2009, 1.)

37 C.F.R. § 41.52 states in relevant parts:

(a)(1) Appellant may file a single request for rehearing within two months of the date of the original decision of the Board....*The request for rehearing must state with particularity the point believed to have been misapprehended or overlooked by the Board. Arguments not raised in the brief before the Board and evidence not previously relied upon in the brief and the reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. ...*

(2) Upon a showing of good cause, appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(3) New arguments responding to a new ground of rejection made pursuant to § 41.50(b) are permitted. [Emphasis added.]

Appellant contends that the Board erred in finding that Eggers necessarily teaches an LED light bulb with a load (Request 1). This contention is not well taken.

The term “LED bulb,” as used in independent claims 39 and 49, is not limited by structures or functions other than those recited in the claims. Moreover, Appellant has not directed our attention to a definition of the term “LED bulb” in the record before us on appeal. We have therefore read that term broadly in light of the disclosure, which indicates that the invention relates to “LED lamp modules containing control circuitry for producing light of high intensity usable as a tail, brake, or turn signal lamp” (Spec. 1, 1. 31 to 2, 1. 2). See *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374,

¹ It is clear from the record that Appellant is requesting rehearing of our Decision entered September 29, 2009.

1379 (Fed. Cir. 2007) (“[T]he PTO must give claims their broadest reasonable construction consistent with the specification. Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.”) (Citation omitted); *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (“[T]he PTO gives a disputed claim term its broadest reasonable interpretation during patent prosecution.”). Appellant has not directed our attention to credible evidence of record that proves harmful error in our claim interpretation.

As indicated in our Decision, Eggers teaches at col. 6, ll. 8-21, “an LED light source that produces less heat, operates for a longer life, is less prone to failure in high vibration environments, and consumes less power when compared to an incandescent bulb” (Decision, FF 6). Eggers also teaches employing appropriate first and second resistors in its LED compensation circuits in the LED light source to provide the LED luminance that matches the incandescent luminance at input voltage levels of 12 and 26.5 volts (Decision, FF 4). Further, Eggers teaches, at col. 1, ll. 52-54, that “there are many uses in which it is desirable to replace an incandescent bulb with an LED of similar luminance” (Decision, FF 3). Thus, Appellant has not identified reversible error in our finding at page 6 of our Decision that “Eggers teaches a LED light source [having a load/resistance circuit] that can be substituted for or that can replace an incandescent bulb [to produce similar luminance], thus necessarily indicating that the LED light source is a LED light bulb that can be used in the place of the incandescent bulb.”

Appellant also contends that the Board erred in interpreting “an application” in claim 39 as including the second LED light bulb replacement application recited in claim 49 (Request 1). However, as indicated at page 6

of our Decision, the word “an application” in claim 39 is not limited to any particular application. The plain meaning of the word “an application” in claim 39 includes any and all applications, including the second LED light bulb replacement application recited in claim 49. (See, e.g., dependent claim 41). Appellant has not explained, much less shown, why the word “an application” in claim 39 is not properly interpreted by the Board (Request 1-4).²

Applicant’s arguments that Eggers “anticipates nothing about matching the load resistance/impedance or current draw of the LED bulb to the incandescent bulb it replaces” (Request 2) are not persuasive of harmful error because they read limitations into the claims. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”). Neither the “application” recited in claim 39 nor the “bulb” recited in claim 49 need be an incandescent bulb.

In conclusion, based on the foregoing, we have granted Appellant’s request to the extent that we have reconsidered our Decision, but we deny Appellant’s request to make any change therein.

² Appellant contends that claims 50, 52, and 54 are patentable for the same reason advanced in support of claim 39 (Request 1). These and other dependent claims were not separately argued in the opening Brief dated July 19, 2007. Therefore, for purposes of this appeal, they stand or fall together with independent claims 39 through 49. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.”).

Appeal 2009-001007
Application 10/730,744

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

sld

GARVEY SMITH NEHRBASS & NORTH, LLC
LAKEWAY 3, SUITE 3290
3838 NORTH CAUSEWAY BLVD.
METAIRIE, LA 70002